

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ERNESTO VEGA MORALES

Plaintiff,

v.

SCOTT FRAUENHEIM, et al.,

Defendants.

Case No. 20-CV-02949-LHK

**ORDER TO SHOW CAUSE**

Before the Court are two petitions for a writ of habeas corpus filed by Ernesto Vega Morales ("Petitioner"). First, on March 3, 2020, Petitioner filed a pro se petition for a writ of habeas corpus. *See* Case No. 20-CV-01567-LHK, ECF No. 1 ("Pro Se Petition"). Then, on April 29, 2020, Petitioner filed a second petition for a writ of habeas corpus through counsel. ECF No. 1 ("Counseled Petition").

Because "[f]ederal courts . . . retain broad powers to prevent duplicative or unnecessary litigation," the Court will not permit petitioner to concurrently pursue two habeas petitions with overlapping claims. *Slack v. McDaniel*, 529 U.S. 473, 478, 489 (2000) (acknowledging that "vexatious" habeas petitions may be dismissed). Moreover, if the Court were to rule on Petitioner's Pro Se Petition, his Counseled Petition may be barred unless a court of appeals grants leave to file a second or successive petition. *See* 28 U.S.C. § 2244(b)(3)(A).

On March 5, 2021, the Court ordered Petitioner to respond to the Court's questions and state whether Petitioner planned to proceed with the Pro Se Petition or the Counseled Petition within 14 days. ECF No. 5. On March 16, 2021, counsel for Petitioner requested an extension of 31 days until April 19, 2021 to file a response. ECF No. 6. On March 18, 2021, the Court granted the requested extension. ECF No. 7. As of today, May 14, 2021, the Court has not received a response to the Court's March 5, 2021 Order.

Therefore, Petitioner is hereby ORDERED TO SHOW CAUSE why this case should not be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Petitioner shall file a written response to this Order to Show Cause by May 21, 2021. Failure to respond to this Order to Show Cause by May 21, 2021 will result in dismissal of this action without prejudice for failure to prosecute. An order in this case does not affect Petitioner's separately filed Pro Se Petition.

**IT IS SO ORDERED.**

Dated: May 14, 2021



LUCY H. KOH  
United States District Judge